



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Mr. Charles J. Breaux, Jr.
Legal Administrative Assistant
Jefferson County Sheriff's Office
P.O. Box 2950
Beaumont, Texas 77704

OR96-2109

Dear Mr. Breaux:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102286.

The Jefferson County Sheriff's Office (the "Sheriff") received a request for information concerning the work schedule and leave time taken by Lt. Coy Collins for the months of October, November and December in 1994. You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.101, 552.102, and 552.111.

Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). We have reviewed the requested information and conclude that as it concerns a public employee's job performance, we do not believe the information is protected from public disclosure based on section 552.101 or 552.102.

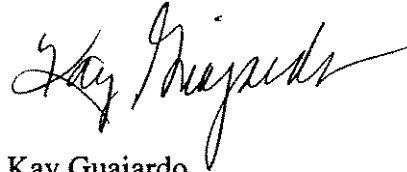
Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* The information at issue contains no advice or recommendation, but is purely factual. The Sheriff may not withhold the information from the requestor based on section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 102286

Enclosures: Submitted documents

cc: Ms. Rosemary S. Jackson
2325 Norma Street
Port Arthur, Texas 77640
(w/o enclosures)